

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/ozah/index.html>
Phone: (240) 777-6660; Fax (240) 777-6665**

CASE NO. CU-T-17-01 and CASE NO. S-596

**APPLICATION OF CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS AND EAST
GATE RECREATION ASSOCIATION, INC., FOR TELECOMMUNICATION TOWER
CONDITIONAL USE & REQUEST FOR ADMINISTRATIVE MODIFICATION**

NOTICE OF HEARING AND MOTION TO AMEND APPLICATION

Please take notice that the above-captioned matter is scheduled for a public hearing before the Hearing Examiner on **Tuesday, September 26, 2017** and **Wednesday, September 27, 2017**, in the 7th Floor County Council Hearing Room, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, at 9:30 a.m., or as soon thereafter as this matter can be heard.

Background

On September 23, 2016, Applicant, Cellco Partnership d/b/a Verizon Wireless (Cellco) filed the above conditional use application for a Telecommunications Tower (Tower or support structure), pursuant to Section 59.3.5.2.C and Section 59.7.3.1.2 of the Zoning Ordinance (2014), with the Office of Zoning and Administrative Hearings (OZAH). The application seeks conditional use approval for the installation and operation of an 80-foot-tall Tower (with antenna's extending to 83 feet) to be located on a leased area measuring 20' x 35', approximately 700 square feet in size on property owned by East Gate Recreation Association, Inc. (East Gate). Exhibits 1-3. The application was amended to add the property owner, East Gate as a Co-Applicant in an Order dated November 25, 2016. Exhibit 63.

There is an existing special exception (S-596, granted in 1978 by the Board of Appeals) for a community swimming pool on the property. The special exception must be modified to allow the proposed conditional use on the property. On September 22, 2016, Applicant filed a request for an administrative modification of its special exception under Section 59-G-1.3(c)(1) of the Zoning Ordinance (2004). Pursuant to Section 59-A-4.125(a)(2) of the Zoning Ordinance (2004), the Board of Appeals referred the request for an administrative modification to the OZAH for consideration in connection with the conditional use application (CU-T-17-01). Case No. S-596 Exhibits 38(b), 39. The two matters are consolidated.

The subject property is identified as Parcel C, Block J in the "East Gate of Potomac" Subdivision, located at 10200 Gainsborough Road, Potomac, Maryland in the R-200 Zone. The property tax account number is 10-00909658.

The public hearing, originally scheduled for November 18, 2016, (Exhibit 24) was rescheduled to December 19, 2016, and again to January 9, 2017, at the Applicant's request. Exhibits 29, 30, 31, 32, 69, 71. At the public hearing held on January 9, 2017, the Hearing Examiner granted applicant's third request to postpone the hearing indefinitely to allow time for the applicant to file an Amended Application. Exhibit 86(a)-(b); T. 6.

Motion to Amend and Request for Waiver of Side Yard Setback:

On June 29, 2017, the Applicant filed an Amended Application and a Request for Waiver of the side yard setback from the southern property line along Democracy Blvd. Exhibit 145. The proposed changes to the original application are summarized in the amended Justification Statement as follows (Exhibit 145(c)):

Applicant Verizon Wireless proposes to erect an 80'tall support structure which will support Applicant's twelve (12) telecommunications antenna. The support structure will be camouflaged as a pine tree. The antenna RAD center will drop to 76' in order to keep the structure at 80' while accommodating the supports required for the camouflaging tree branches. The tree branches will extend to a height of 89' and will camouflage the support structure and give shape to the tree. The monopole will be designed with capacity to hold antennas and cables of at least two (2) other communications carriers (hereinafter, the "Co-locators") in addition to the antennas and cables of Verizon Wireless.

A fence will be installed around the compound. In order to provide additional screening, the fencing will be designed as a chain link fence with green slat inserts to blend into the existing greenery at the site. The structure is proposed to be located on the property to take advantage of the existing topography and trees to mitigate its visual impact. In addition, Verizon Wireless will plant additional trees on the slope that runs behind the tennis courts on the north side of the property up to Snug Hill Lane in order to provide additional visual screening from homes in that area. Access to the telecommunications facility will be from Gainsborough Road to the property and through a 6' gate to be installed.

The amended application does not change the location of the proposed support structure as shown on the original application. The required minimum setback of the support structure from the property line is a distance of one foot for every foot of height of the support structure. In this case, the minimum required setback is 80' from the property line. The support structure is located more than 80' from the property line on all sides of the property except to the south. The support structure is approximately 28'11" from the southern property line along Democracy Blvd. Pursuant to Section 59.3.5.2.ii.(d) of the Zoning Ordinance (2014), Applicant is requesting a 51'1" waiver or reduction of the 80' required minimum property line setback. The need for the side-yard setback waiver has existed since the application was originally filed and does not result from the modifications proposed in the amended application.

The following documents were filed in support of the Amended Application and Request for Waiver of the side yard setback from the southern property line (Exhibits 145 (a)-(m)):

1. Amended Justification Statement;
2. Amended Land Planning Report, revised June 12, 2017;

3. Amended Zoning drawings (Site Plan, Site Details, Elevation & Details, Setback Exhibit (new) and Landscape Plan (new);
4. Amended Photo simulation depicting a camouflaged tree pole and ground equipment screening.

A motion to amend an application requests permission only to revise portions of the original application. Granting the motion merely allows the Applicant to make the requested changes to the application, but does not, in any way, approve the application itself or express an opinion as to the merits of the amended application or the proposed changes.

The Hearing Examiner will take the Motion to Amend under consideration for a period of ten days from the date of this notice. Any interested parties that object to the Motion to Amend must do so in writing no later than **Friday, August 11, 2017**.

Persons or associations that are (1) represented by counsel, (2) intending to appear in organized opposition, **or** (3) intending to introduce expert evidence or testimony must file a pre-hearing statement containing the information required by Rules 3.4 and 3.5 of OZAH's Rules of Procedure (Rules). Filings must include an electronic copy of the statement and all attachments. These Rules may be found on OZAH's website at <http://www.montgomerycountymd.gov/ozah/>. The Applicant must submit its pre-hearing statement at least 30 days before the public hearing. Persons in opposition that are required to file a pre-hearing statement must do so no less than 20 days before the public hearing.

In compliance with Maryland requirements regarding the practice of law, groups or associations must have counsel unless their witnesses are members of the group or association who will offer testimony in narrative form (*i.e.*, there is no need for an attorney to conduct a direct examination).

In addition to all other requirements, any party submitting documentary evidence for the record must file electronic copies of their submissions. Amended electronic copies must also be submitted for any amended documents. Electronic copies must be submitted on external storage media, including Compact Discs or DVDs, in Microsoft WORD format for text documents, and in PDF format for plans, photos and other non-text documents.

Nothing in this notice is intended to limit the rights of individual members of the public to testify during the hearing or to submit pertinent written materials at any time while the record remains open for that purpose. You may submit a signed letter to OZAH, which will be considered by the Hearing Examiner as part of the record, but doing so will not automatically make you a party of record. Applicants and members of the public who testify at an OZAH hearing, whether for or against the application, are automatically considered parties of record. A person or organization that does not wish to appear at the OZAH hearing but wishes to be a party of record may request that status in a signed letter to OZAH. *See* OZAH Rule 3.1.

The entire file may be reviewed in the Office of Zoning and Administrative Hearings, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m., prior to the date of the hearing.

If you need services to participate in a public hearing, please contact us as far in advance as possible by calling 240-777-6660 (TTY 240-777-7914) or emailing us at

ozah@montgomerycountymd.gov. This document is available in alternative format such as large print upon request, via the same phone numbers and email address.

Notices forwarded this 1st day of August, 2017 to:

Cathy G. Borten & M. Gregg Diamond, Attorneys for CU Applicant

Thomas H. Barnard & Elizabeth Cappiello, Attorneys for Co-Applicant

William J. Chen, Jr., Attorney for Opposition

Cheryl Wetter

Charles Frederick, Esquire, Associate County Attorney

Diane Schwartz-Jones, Director, Department of Permitting Services

Barbara Jay, Executive Director, Board of Appeals

Gwen Wright, Director, Planning Department

Washington Suburban Sanitary Commission

State Highway Administration

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)

Civic, Renters' and Homeowners' Associations within a half mile of the site

Any Municipality within a half mile of the site

Office of Zoning and Administrative Hearings



By: _____
Tammy CitaraManis
Hearing Examiner